BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. RE-00000C-94-0165

FURTHER COMMENTS

The Arizona Transmission Dependent Utility Group[1], by its undersigned counsel, herewith submits further comments on the proposed Electric Competition Rules pursuant to the Commission's Procedural Order dated April 21, 1999. The additional time for these comments was set by the Procedural Order of May 21, 1999.

R14-2-1601(2). The term "aggregator" should be deleted. H.B.2663 confirms the authority of the Commission to permit aggregation of loads by multiple customers. It does not confine that activity to regulated public service corporations. The definition of Electric Service Provider is broad enough to include the concept of aggregation if someone is in the business of offering that service as a public service corporation. However, multiple customers may wish to act on their own behalf without employing a business agent and would be thwarted in that cooperative activity by the licensing requirement that the current definition mandates. Rather, the definition of the activity should be substituted in order to allow both regulated and unregulated

[1] Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

aggregation as appropriate. For this purpose, we suggest the following substitute definition: "Aggregation" means the combination and consolidation of loads by multiple customers.

R14-2-1601(27). We suggest that the definition of Noncompetitive Services be amended to add "Aggregation Service". This addition would clearly fulfill the expectation of the Legislature in confirming the Commission's authority to permit aggregation. It would also level the playing field by providing the equivalent mandate to H.B.2663 that covers public power entities. Without this addition, the Salt River Project must allow aggregation activities while Affected Utilities only have to allow people in the business (electric service providers) to do this. Thus, ordinary customers who might wish to cooperate with each other in purchasing electricity can do so if they live in the Salt River Project electric service area but not elsewhere. Retail electric customers served by Affected Utilities should not be so disadvantaged.

R14-2-1601(36). We urge the Commission to reconsider prior comments that we and others have made about deleting nuclear fuel disposal and nuclear power plant decommissioning programs from the definition of Systems Benefits. This is not a health and safety subject. The only health and safety promoted by including these costs in Systems Benefits is the health and safety of stockholders. Even as we speak, investor-owned utilities are seeking favorable tax treatment from Congress on these generation-related costs (H.R.2038, the Nuclear Decommissioning Restructuring Act). These costs are associated with generation and they should remain so in the rate structure mandated by these Rules. It is clearly anticompetitive to allow utilities owning nuclear facilities to bury this cost of doing business in wires charges to tilt resource pricing and thus competition in their favor. These costs should be part of the generation service offered by the owning utility

and, to the extent unrecoverable, the stranded cost temporarily collected under these Rules.

R14-2-1606.B. In changing this Rule to eliminate the requirement for competitive bidding, the Commission has removed language that would make it clear that this provision operates prospectively from its initial date on contracts entered into after that date. That would seem to be the obvious intent as this particular provision has been written in various ways in various versions of these Rules. It should be clarified. Otherwise, the provision, if applied to existing contracts which still would be in effect on the effective date of the Rule, would impair existing contracts. That in turn would make the Rule unconstitutional (Article II, Section 25, Constitution of Arizona; Earthworks Contracting, Ltd. v. Mendel-Allison Const. Of California, Inc., 167 Ariz. 102-106-109, 804 P.2d. 831, 835-838 (App. 1990). We are also concerned about what the term "open market" means in the Rule. Wholesale contracts for resources, regardless of the resources' ultimate retail destination, are the province of the Federal Energy Regulatory Commission as to ratemaking. Clearly, the Commission does not have jurisdiction to dictate the commercial practices of utilities in acquiring resources for resale. Further, we are puzzled how the Commission would enforce this mandate. Who would know about a particular resource arrangement in order to complain that another utility had acquired a resource other than on the open market? Will the UDC have to file all these contracts with the Commission and will they then be public records? What, in fact, will be out there except the open market? In other words, is this Rule necessary?

R14-2-1608.A. This Rule needs a slight updating of terminology to be consistent with the Rules in general. Specifically, at page 75, on line 3, the Commission should strike the word "consumers" and substitute therefor

"retail customers" or "Retail Electric Customers" (compare R14-2-1607.F. and R14-2-1601(32)). Obviously, Systems Benefits charges are not going to be collected from consumers but from retail customers. The Commission should correct this oversight in the language.

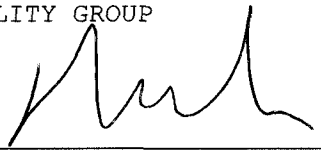
R14-2-1616. Certainly there is some middle ground between the current proposal to let each Affected Utility make up its mind about its own code of conduct and some set of standards that provide a framework for compliance with this important Rule. Effectively, the Commission has thrown up its hands and told the Affected Utilities to invent a rule for the Commission to apply. That is obviously unlawful delegation of authority. It also provides no standard by which the Commission can judge whether the Affected Utility has complied with the Rule. With all the comments the proposed Rule received and all of the various provisions in it, certainly something can be salvaged out of it to provide at least some initial framework for compliance with this Rule. It seems that, almost every day, someone's affiliate is being swallowed up or is changing hats. It is getting impossible to tell the players without a program. In these circumstances, codes of conduct are essential if fair dealing has any hope of surviving as a concept in these Rules. We urge you to instruct Commission staff to build a better mousetrap out of the former provisions now indicated as deleted and the comments on them.

We also are concerned about how much change in this Rule can be accomplished in this proceeding. The Commission is well aware of its responsibility not to adopt final Rules that are "substantially different" from the proposed Rules. See: ACC Decision No. 61223, August 27, 1998, p.10; A.R.S. Section 41-1025. See also: Summit Properties, Inc. v. Wilson, 26 Ariz.App. 550, 553-555, 550 P.2d. 104, 107-109 (1976). It was suggested at a recent hearing that the Commission could adopt either the FERC or SRP

models for codes of conduct. Whatever the merits of doing so, we believe that the Commission would be treading dangerously close to the edge of the "substantially different" cliff. We do not believe that it serves anyone's interest to force renotification of any portion of these Rules at this time. Depending on what the Commission ultimately decides about the code of conduct rule, a further proceeding to consider the FERC and/or SRP models, or other models for that matter, might not only be advisable but necessary. In the meantime, working within the four corners of the pages of documents already collected in this proceeding seems appropriate.

RESPECTFULLY SUBMITTED this 23rd day of June, 1999.

ARIZONA TRANSMISSION DEPENDENT UTILITY GROUP

By 

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Original and 10 copies of the foregoing filed this 23rd day of June, 1999 with:

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